

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,799 &

) 12,870

Appeal of)

)

INTRODUCTION

The petitioner appeals two separate decisions by the Department of Social Welfare regarding his food stamps. The first issue concerns whether the petitioner should have received food stamps effective October 1, 1993, based on an application he filed on October 22, 1993. The second issue is whether the petitioner should be required to have his food stamps calculated on an annual basis based on his yearly income as a self-employed farmer.

FINDINGS OF FACT

The petitioner operates a dairy farm. In September, 1993, the Department notified him that his food stamps would close effective October 1, 1993, because of the excess resources of the petitioner's brother, who at that time was

a member of the petitioner's food stamp household. The petitioner does not contest that closure.

However, the petitioner maintains that beginning on or about October 1, 1993, he began calling the Department to inquire about filing a new application based on a change in circumstances, and that he picked up a blank application at the district office on or about October 6, 1993. He testified that he called his worker five times but didn't get through to her and did not receive any return calls. Finally, on October 22, 1993, he went to the district in person and submitted his completed application.

This application was eventually granted--but only effective as of October 22, 1993, the date it was filed. The petitioner maintains that because the Department did not return his phone calls, and that because it took him longer to fill out this application because of his self-employed status, this application should be backdated to be effective October 1, 1993.

The Department's records show only one phone contact from the petitioner during this period that, admittedly, was not returned. However, the petitioner's caseworker testified (and the petitioner does not

dispute) that the petitioner was represented by an attorney during this time regarding an overpayment that had been assessed in an action related to the petitioner's September 30th closure.⁽¹⁾ The worker stated that from the outset of the dispute she had advised the petitioner's attorney to have the petitioner file a new application, but that this was not done until the petitioner came in to the Department's office on October 22nd.

Following being found eligible as of October 22, 1993, the petitioner continued to receive food stamps until May, 1994. The Department calculated his benefits based on quarterly reports the petitioner filed regarding his income and losses. The quarterly reports filed by the petitioner consistently showed losses in excess of income.

At his regularly scheduled review in May, 1994, the Department informed the petitioner that his food stamps would from then on be determined on an annual basis based on the petitioner's income and losses reported on his previous year's tax return. The petitioner agreed to furnish the Department with a copy of his 1993 tax returns.

The petitioner's tax returns show that he reported a net income for the year, 1993. When the petitioner protested that his tax returns did not accurately reflect either his actual losses in 1993 or his expected income in 1994, the hearing officer continued the matter to allow the petitioner to gather evidence as to both issues. The petitioner was also advised that he could file an amended tax return for 1993 if he felt his business losses were not accurately reflected in the return he had already filed.

At his hearing, eventually held on August 29, 1994, the petitioner informed the hearing officer and the Department that he had decided not to file an amended return for 1993. He continued to argue, however, that his income for 1994 would be lower, and that, therefore, the Department should not use his 1993 tax return to calculate his food stamps during 1994. The only evidence submitted by the petitioner on this point, however, was his first quarter, 1994, report⁽²⁾ and an article in a dairy farmers trade publication that predicted lower dairy prices for farmers in 1994. The hearing officer does not find such evidence persuasive.

ORDER

The Department's decisions is affirmed.

REASONS

On the question of whether the Department, because it didn't return the petitioner's phone calls, should have found the petitioner eligible for food stamps as of October 1, 1993, instead of as of the date of his October 22, 1993, application, two factors render the petitioner's position untenable.

First, even if the petitioner made all the unreturned phone calls he said he did, he presented no evidence or argument that the Department in any way discouraged or hindered him from filing a completed application prior to October 22nd. The petitioner admitted that he filed his application on October 22nd even though he had still not

heard from the Department. There is no evidence he could not have done so sooner.

Second, during this period the petitioner was represented by an attorney whom the Department advised to have the petitioner file a new application. The fact that the Department was communicating with the petitioner's attorney during this period not only must be considered adequate advice to the petitioner regarding his need to file another application, but also excuses the Department's failure to return phone calls directly to the petitioner.

As to the question of whether the petitioner's food stamps should be computed by annualizing his self-employment income, Food Stamp Manual § 273.11(a)(1)(i) provides as follows:

Self-employment income which represents a household's annual income shall be annualized over a 12-month period even if the income is received within only a short period of time during that 12 months. For example, self-employment income received by farmers shall be averaged over a 12-month period, if the income is intended to support the farmer on an annual basis. However, if the average annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income on anticipated earnings. The State agency shall not calculate self-employment income on the basis of prior income (e.g., income tax returns) when the household has experienced a substantial increase or decrease in business. This self-employment income shall be annualized even if the household receives income from other sources in addition to self-employment.

The issue in this case is whether the petitioner's annualized income, based on his 1993 tax returns, "does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business". As noted above, the only evidence put forth by the petitioner on this issue was the petitioner first quarter, 1994, report and a farm publication article predicting lower milk prices in 1994, which the hearing officer found unconvincing. The hearing in this matter was held on August 29th, two-thirds of the way through 1994. Yet, the petitioner produced no evidence and made no actual claim that his business for the year had substantially decreased, or was likely to in the remaining four months of the year. Absent this evidence it must be concluded that the Department's decision to annualize the petitioner's income based on his 1993 tax return is in accord with the above regulation, and must, therefore, be affirmed. 3 V.S.A. § 3091(d) and Food Stamp Fair Hearing Rule No.17.

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1. Neither the closure nor the overpayment is at issue in this fair hearing.
2. At the time he submitted this report, however, the petitioner maintained that it was not representative of his anticipated income for the entire year.